

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,	12-CR-134 (BMC)
4 Plaintiff,	United States Courthouse
	Brooklyn, New York
5 -against-	February 16, 2018
	10:00 a.m.
6 ADNAN IBRAHIM HARUN HAUSA,	
7 Defendant.	

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8 TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE BRIAN M. COGAN
9 UNITED STATES DISTRICT JUDGE

10 APPEARANCES

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25	Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

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1 (In open court.)

2 THE COURTROOM DEPUTY: *United States versus Hausa,*
3 Docket Number 12-CR-134.

4 Counsel, please state your appearances starting with
5 the government.

6 MR. JACOBS: Good morning, Your Honor. Matthew
7 Jacobs, Shreve Ariail, Joseph Kaster for the United States.
8 Here with us is FBI Special Agent Greg Paciorek.

9 THE COURT: Is anyone here from Probation?

10 THE PROBATION OFFICER: Yes, I'm here.

11 THE COURT: All right, good morning, all.

12 MR. STERN: David Stern, Susan Kellman and Joshua
13 Dratel for Mr. Harun. Good morning.

14 THE COURT: Good morning. I thought one of you were
15 going to be at the facility.

16 MR. STERN: We have one of my associates is at the
17 facility. Rachel Perillo is in the facility -- right here on
18 the camera as we speak, actually. So she's there and she has
19 Mayerlin Ulerio's phone number. If she wanted to contact us
20 for any reason, she would call us and we can then communicate
21 with them.

22 THE COURT: All right, let me just state for the
23 record what's going on here.

24 This is the defendant's sentencing, and he's not
25 here, as was the case throughout his trial and some of the

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1 later status conferences prior to the trial.

2 At the defenses' suggestion, I had entered an order
3 setting forth procedures to try to get the defendant to come
4 here but to not do that at the cost of a possible violent
5 episode.

6 We heard from the marshals this morning that the
7 defendant had refused to be produced, and his words to the
8 marshals were "This is not my court, that is not my judge."
9 So it seems to me he has again shown that he is knowingly and
10 willfully not attending these proceedings.

11 Does defense counsel have any different view of it?

12 MR. STERN: No, we completely agree. It was our
13 wish that he not be harmed and no one else be harmed, so we
14 explicitly asked that he not be brought here.

15 I wanted to do one thing, Judge, unless you want, of
16 course, I want to make sure Ms. Perillo can hear us. I'm just
17 going ask her if she can waive or something.

18 Rachel, waive or something if you can hear us.

19 MS. PERILLO: Oh, I'm sorry. I can hear you.

20 THE COURT: All right, we got a waive and a smile.

21 MR. STERN: We're lucky.

22 MS. KELLMAN: It's early in the proceedings.

23 THE COURT: Yes. And we do have an interpreter for
24 the defendant. He's been previously sworn. He is here in the
25 courtroom and can be reached should the defendant indicate to

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1 defense counsel who is there in front of his cell that he
2 wishes to say something or speak to the interpreter.

3 Is also assume, while I don't see the defendant, if
4 he wanted to come to the end of the cell, he could see his
5 video.

6 Is that right, Melonie?

7 THE COURTROOM DEPUTY: Yes.

8 THE COURT: So he has video access if he wanted to
9 use that. It appears at the moment he does not.

10 Okay, just for the sake of good order. My finding
11 is that he is knowingly and again voluntarily absenting
12 himself from these proceedings.

13 MR. JACOBS: And just for the sake of the record,
14 Judge, I'll note that in accordance with paragraph 6 of your
15 February 1st order, my understanding is defense counsels'
16 provided a copy of this order in-house to the defendant.

17 THE COURT: All right. I've reviewed all of the
18 sentencing memoranda, other documents on the extensive docket
19 here. The first thing I want to do in terms of what we're
20 going to do today is reject the defendant's request to call
21 Officer Quamina as a live witness. He has submitted an
22 affidavit that the defendant's obtained from him, defense
23 counsel obtained from him. The government is not disputing
24 the contents of that affidavit.

25 There is an issue of securing testimony from a

1 government employee. That was part of the discussion on this
2 affidavit. And in my view calling him as a witness to testify
3 would effectively give the defendant a second bite at that
4 apple when the parameters of his testimony have already been
5 agreed upon, and I accept that testimony.

6 In addition, I believe the parties have seen
7 probation's sentencing recommendation; is that right?

8 MR. JACOBS: The government has not.

9 MS. KELLMAN: Not yet, Judge.

10 THE COURT: What we're going to do then is I'm going
11 to ask my deputy to print out a copy for each side and take a
12 look at that, and when you're done, please return it to my
13 deputy and we will go forward from there.

14 For the record, probation's recommendation is life
15 imprisonment on Counts One and Two. The statutory maximum of
16 15 years on Counts Three and Four to run concurrently. And
17 then Count Six, of course, is ten years consecutive to the --
18 minimum ten years consecutive to the other counts.

19 MR. JACOBS: Your Honor.

20 THE COURT: Yes.

21 MR. JACOBS: With the Court's permission, I'd also
22 like to advise the Court of the presence of certain
23 individuals here that qualify as victims under the Crime
24 Victims' Rights Act.

25 THE COURT: Right.

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1 MR. JACOBS: Present in the gallery is Jane Nelson,
2 who is the mother of Private First Class Jerod Dennis; as well
3 as Jillian Dennis, the sister of Jerod Dennis; and Jordan
4 Dennis, the brother of Jerod Dennis. Also present is Command
5 Sergeant Major Brian Severino with the U.S. Army, and Sergeant
6 First Class David Cyr of the U.S. Army, Retired.

7 And my understanding, Judge, is that Jordan Dennis,
8 Command Sergeant Major Severino, and Sergeant First Class Cyr
9 would like to make statements orally at this proceeding today.

10 THE COURT: All right, that's fine. We will hear
11 from them when I've heard from the parties.

12 MR. STERN: Judge, we're returning the
13 recommendation.

14 THE COURT: All right, thank you.

15 All right, both sides have had an opportunity to
16 review that recommendation.

17 With regard to the description of the offense and
18 the offender characteristics in the presentence investigation
19 report, I think the defense has raised two issues as to that.

20 The first is the characterization of the ridgeline
21 incident as a terrorist attack, that's at paragraphs 28 and 30
22 of the PSR. I understand that defense points that they
23 believe that should be changed to a military engagement or
24 something to designate its military nature.

25 I'm going to deny that request. I certainly

1 understand the defenses' argument. I have to deal with that
2 argument. But I think it's accurate as written in the PSR he
3 has been convicted of material support of terrorist
4 organization, and I don't think the PSR is not inaccurate in
5 that way.

6 The only other point I received from the defense on
7 the description of the offense and the offender
8 characteristics is that the defendant has claimed to his
9 counsel that he's a citizen of Niger and not Nigeria. The
10 government has proffered that they've spoken to Nigeria,
11 Nigeria says, no, he is not. So unless the defense has
12 something to back that up, I'm going to leave that unchanged
13 in the PSR as well.

14 MS. KELLMAN: I don't think there is anything to
15 back it up other than that's what our client's always said,
16 Your Honor. But I would note that in the recommendation it
17 says that he was born in Saudi Arabia, which I don't think
18 anybody thinks is correct.

19 THE COURT: What I'm going to do is I am going take
20 those portions of Sections A and C from the PSR that describe
21 the offense and the offender characteristics, I'm going to
22 adopt those as my findings of fact for purposes of the
23 sentence.

24 Okay, let's next turn to the guidelines, which I
25 want to emphasize to the parties are merely advisory and only

1 one factor for me to consider in determining the appropriate
2 sentence.

3 Before variances, that is based on the literal
4 language of the guidelines, that's the first thing I think I
5 have to establish as a precedent. In doing that I'm
6 differentiating between the interpretation of the guidelines
7 language: Does it apply by its terms as opposed to a number
8 of policy and other reasons that the defense has raised as to
9 why I should not apply the guidelines, which, of course, I
10 have the discretion to do.

11 So turning to Count One first. There doesn't seem
12 to be any dispute as to the base offense level in Count One,
13 what I'll call the raw guideline calculation that starts at
14 43, which even with a criminal history of Category I, and
15 we'll talk about that, it still comes out to life
16 imprisonment.

17 There is one objection to one of the enhancements
18 that's been applied in the PSR that the defense has objected
19 to the four-point role enhancement. I've read the arguments
20 on that. Does the defense need to be heard any further on it?

21 MR. STERN: No, Your Honor.

22 MS. KELLMAN: No.

23 THE COURT: All right. First, I'll note that it
24 really doesn't matter one way or the other because the
25 guideline on Count One comes out to life, whether I add the

1 enhancement or not.

2 But I do think that the enhancement is appropriate
3 here. I have to reject the defense characterization that the
4 defendant was a, quote, mere soldier, close quote.

5 Putting aside the dispute over whether he should be
6 considered a soldier, I don't think there was anything mere
7 about this defendant. It seems to me he is at least middle
8 management and maybe upper middle management in al-Qaeda.

9 It is not disputed that he had a meaningful
10 relationship with senior terrorists within the organization.
11 I don't think privates generally have relationships with
12 generals or even colonels. And he served as an envoy between
13 al-Qaeda and other terrorist groups. He also recruited
14 people to participate in his planned bombing of the American
15 Embassy in Nigeria. So I am quite sure the enhancement is
16 correct as to those four points.

17 Now on Counts Two, there's a dispute as to whether
18 to use guideline 2K1.4(c), which enhances the guidelines to
19 life if there was an intent to cause death. Probation and the
20 defendants were on the same side for this to say the
21 enhancement -- that the cross reference to murder should not
22 apply and the government thinks that it should.

23 Let me ask -- again, I've read these arguments,
24 anybody want to add anything else to them?

25 MR. STERN: No.

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1 MR. JACOBS: No, Your Honor.

2 THE COURT: Okay.

3 I think the government is right. If the intent of
4 the defendant under this guideline is to cause death as well
5 as property damage, then the cross reference is appropriate.
6 That's what the guideline says.

7 Probation has placed a gloss on it to effectively
8 say that the plan has to reach a certain level of fruition
9 before the cross reference is triggered. But I don't see that
10 anywhere in the guideline. It seems to me if the defendant
11 has done enough to get convicted for conspiracy then it has
12 gone far enough to trigger the guideline. And I think the
13 guideline clearly differentiates between a bombing that
14 carries with it a risk of death, whether it is intended by the
15 defendant or not, and a bombing that has the intent of causing
16 death. I think that's the distinction. And I don't think it
17 can be seriously argued that this defendant did not intend to
18 cause death in the bombing that he was planning.

19 So my conclusion is that the base offense level,
20 again, is 43, with the enhancements it comes out the same as
21 Count One, which brings us to an offense level of 65 for both
22 counts.

23 Now I did want to ask probation something, though.
24 The offense level for Count Two still comes out to 65, but
25 it's got a 15-year maximum -- oh, no, that's Counts Three and

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1 Four. Okay. That's fine. Never mind.

2 Next, in terms of the criminal history --

3 MR. JACOBS: Your Honor, if I may interrupt for a
4 moment.

5 THE COURT: Yes.

6 MR. JACOBS: Apologies. The government made a small
7 error in its calculation. I believe that the offense level of
8 65 should be reduced by three levels pursuant 2X1.1 because
9 the offense charge was a conspiracy.

10 THE COURT: Oh, I missed that. Okay.

11 So it's 62 on Count Two.

12 MR. JACOBS: Thank you, Your Honor.

13 THE COURT: Okay.

14 On criminal history, there is a provision of the
15 guidelines that allows a horizontal departure. The defense
16 has requested that because this is the only conviction that
17 the defendant has.

18 I recognize that, you know, it's a Category VI by
19 reason of the enhancement, but it's based on one conviction.
20 I don't think it makes a great deal of difference. I don't
21 think it makes any difference whether I horizontally depart or
22 not as long as I remain aware that there are no prior
23 convictions, which, of course, I do. So I'm not going to go
24 through what would be an exercise of determining whether and
25 how much to horizontally depart because I understand why that

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1 argument applies to the guidelines.

2 So my finding on the guidelines, unless there's any
3 other issues I've missed, I think is offense level of 65,
4 Criminal History Category of VI, and that would give an
5 advisory guideline range of life imprisonment.

6 The statute also requires and the guidelines pick up
7 the mandatory ten years to be run consecutively as to Count
8 Six.

9 Anybody think that, aside from the objections the
10 defendant has raised, anyone think I computed it wrong?

11 MR. STERN: No.

12 MR. JACOBS: No, Your Honor.

13 THE COURT: Okay. That's my finding on the
14 guidelines.

15 Let me then hear from the parties as to the
16 application of all of the statutory sentencing factors. The
17 way I will proceed is to hear from defense counsel first.

18 I will advise all the parties I really did study
19 these papers. So don't feel that you're hitting me for the
20 first time with these arguments.

21 Then after that, if the defendant wants to speak,
22 which it still does not look like he does, I will hear from
23 him. I will then hear from the government. And then I will
24 here from the victims or victims' representatives that have
25 identified themselves in court today.

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1 So let me hear from the defense first.

2 MR. STERN: We will rely on our papers. I think
3 they say all we have to say.

4 THE COURT: Thank you.

5 What's your associate's name?

6 MR. STERN: Rachel.

7 MS. KELLMAN: Perillo.

8 THE COURT: Ms. Perillo, can you see if there is any
9 way you can determine whether the defendant wishes to make a
10 statement?

11 MS. PERILLO: I can try, Your Honor. Hold on.

12 Do you want to speak? Do you want to speak?

13 It does not appear so, Your Honor.

14 THE COURT: All right. Thank you.

15 All right, I'll hear from the government.

16 MR. JACOBS: Thank you, Your Honor.

17 The defendant is an unrepentant al-Qaeda terrorist
18 with American blood on his hands. His crimes could not have
19 been more serious. He represents an extreme danger to this
20 day and for that reason, for those reasons, Judge, we think a
21 life sentence is necessary.

22 The Court is extremely familiar with the facts of
23 this case and has thoroughly reviewed our papers, so I'll try
24 not to be too repetitive, but I do think it's important to
25 underscore a few points here today in open court.

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1 First, the defendant is a lifelong jihadist. He
2 traveled to Afghanistan just before 9/11. And his response to
3 the attacks of 9/11 was significant. He wasn't horrified by
4 those attacks. Just the opposite. He was inspired to join
5 al-Qaeda. To swear allegiance to Usama Bin Laden. And to
6 attack the brave men and women of our armed forces who were
7 deployed there after 9/11.

8 The Court, of course, is familiar with the events of
9 April 25th, 2003. I won't go into them in detail except to
10 say that the defendant and his al-Qaeda fellow fighters
11 ambushed U.S. soldiers. The defendant explained proudly how
12 he opened fire with his collection of cargo and threw grenades
13 one after the other.

14 Tragically two U.S. service members died that day,
15 and I'd like to state their names on the record. 19-year-old
16 private first class Jerod Dennis of Antlers, Oklahoma, and
17 24-year-old airman first class Raymond Losano of Del Rio,
18 Texas.

19 They're going to speak about the affects of that,
20 the victims and the victim's representative, so I'll leave --
21 I think they can say it better than I ever could.

22 Significantly, Judge, the killing of service men in
23 Afghanistan didn't satisfy this defendant. He had bigger
24 ambitious. After the ambush in 2003, he went to al-Qaeda
25 leaders and he told them he wanted to carry out what can only

1 be described as mass murder terror attacks against Americans
2 elsewhere in the world; specifically attacks like the embassy
3 bombing in East Africa.

4 And two things are significant there, Judge, that he
5 wasn't recruited or conscripted for this, he wanted to carry
6 these out. And the second thing, his model. The East Africa
7 embassy bombings. Hundreds of people dead. Thousands
8 horrifically injured. Many horrifically injured.

9 You know, it's tough to imagine a plan more evil
10 than that. It's hard to imagine an offense conduct more
11 serious than the crimes the defendant in this case was
12 convicted of. For that reason alone, a life sentence is
13 warranted.

14 But there's another important reason why the
15 defendant should spend the rest of his life in jail in that he
16 remains firmly committed to jihad today. He stated in open
17 court, quote, I'm a warrior and the war is not over, our
18 terrorism is not over. He's threatened to kill court
19 personnel. He is so obstructive and potentially violent he
20 can't come to court.

21 I think he's beyond just being unrepentant and
22 unremorseful and I think everything he's done before his
23 arrest and afterwards leads to the conclusion that he will
24 commit more crimes if he is ever released. He's beyond
25 deterrence, and the only way to protect the public is to keep

1 him incarcerated.

2 In conclusion, Judge, a life sentence here justly
3 punishes the defendant for the crimes he committed. It sends
4 a powerful and unambiguous message that if you conspire to
5 kill Americans around the world and you're arrested and you're
6 convicted after being afforded all the protections our
7 constitution and the laws provide, you're going to spend of
8 rest of your life in jail.

9 For those reasons, Judge, and the others in our
10 papers, we respectfully submit that the Court impose a
11 guideline sentence of life.

12 THE COURT: All right.

13 I'll hear from Mr. Dennis.

14 MR. JACOBS: And, Judge, if you'll allow, Mr. Dennis
15 has requested to go last in the order of victims.

16 THE COURT: Whichever order you would like to hear
17 them, I will hear them that way.

18 MR. JACOBS: I will start with Command Sergeant
19 Major Severino.

20 THE COURT: All right.

21 THE COURTROOM DEPUTY: Just give us one moment.

22 COMMAND SERGEANT MAJOR SEVERINO: Good morning, Your
23 Honor. I am Command Sergeant Major Brian Severino. I'm
24 currently assigned to Fort Bragg, North Carolina. I'm a
25 30-year career soldier. I've deployed multiple times to

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1 Afghanistan and Iraq. I've been in multiple combat patrols
2 and operations in my career. I just wanted to come here today
3 to talk to the Court about how this has affected my life.

4 Prior to this, 25 April of 2003, I've been in combat
5 operations and patrols. Multiple times after 25 April, I've
6 been exposed to combat. But this day had the most significant
7 impact on my life; not just as a soldier but personally as an
8 individual.

9 On this day, how it has affected me since then is
10 when I came home, I've disassociated myself from my family,
11 removed myself from my family it had such an impact on me. I
12 lost simple pleasures in dealing with things of normal people
13 enjoying life. My family has suffered. So it's just not
14 myself that was suffering from this event, but my family
15 suffered. I did not participate in normal family events. In
16 turn, eventually I lost my family and I got divorced after 19
17 years of marriage.

18 It has an emotional impact on the way I've done
19 things since then. As a soldier, I felt this day has more
20 impact on me, because I feel like I was not there to take care
21 of my duties and protect the soldiers. I let down Jerod and
22 Ray Losano. I failed them and their families by not
23 protecting them and bringing them home like I was supposed to
24 as a leader.

25 I'm sworn -- parents give leaders in the military

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1 their sons and daughters and they trust us to take care of
2 them and protect them, and on this day I failed, and it has
3 weighed on me.

4 It has weighed on me because all the combat after
5 that I've never lost another soldier. And I did my job as a
6 soldier for 30 years and I've taken care all of them and
7 protected and brought all my men home. And I just failed on
8 one day and it has been hitting me hard. For the last 15
9 years it's been working on me.

10 I'm trying to move on with my life. I'm nearing my
11 time in the Army is almost complete, but it has worn all this
12 time and affected my career and my family the most. And I've
13 let too many people down, specifically the families of Jerod
14 Dennis and Ray Losano.

15 That's all I have to say, Your Honor.

16 THE COURT: Thank you, Command Sergeant.

17 Who is next.

18 MR. JACOBS: Sergeant First Class David Cyr, U.S.
19 Army, Retired, Your Honor.

20 SERGEANT FIRST CLASS CYR: Good morning, Your Honor.

21 THE COURT: Good morning.

22 SERGEANT FIRST CLASS CYR: Good morning to all those
23 here present to hear my words.

24 I'm United States Army Retired Sergeant First Class
25 David F. Cyr, Jr. As we sit here in realtime, we are two

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1 months short of the 15-year anniversary of this deadly ambush.

2 My experience, my injuries, my memories, the loss of
3 my comrades make it feel like it's happened yesterday. Not
4 one second, minute, hour or day goes by where the tragic
5 events of that fateful morning is not at the forefront on my
6 thoughts and mind. There's no replacing the lives of those
7 who crawled, walk, ran, and fought to my left and right to
8 preserve our very lives so we can return home to our families.

9 The events of that day continuously haunt me with
10 meticulous clarity. I will never forget the expression on
11 Private First Class Jerod Dennis' face the last time I looked
12 at him or looked upon him. It was a face of a confident and
13 courageous warrior. Nor have I forgotten all the times we
14 shared jokes, but then I'm quickly reminded he is no longer
15 here but not forgotten.

16 In the days and years since the murders that took
17 the lives of so many of my comrades, I've been given the
18 opportunity to share the story of the legacies of my brothers
19 in arms and what happened to us that morning. Despite all
20 those opportunities, I fight through emotions to contemplate
21 what I should speak about today in the presence of the
22 adversary who tried with all his might to take my life, as he
23 did those I was serving with.

24 Should I speak about the survivor's guilt that is my
25 burden ever since that day, or my inability to appreciate

1 joyous occasions shared between family, friends, brothers in
2 arms and loved ones, because in those moments is when I'm
3 overwhelmed but not defeated by a guilt-ridden depression.

4 Maybe I should speak how it took six years after
5 this ambush that my own sisters, Jenna and Nancy, to open up
6 and admit their fear they harbor towards me thinking that I
7 was so angry that I was going to loss my sanity and kill
8 someone.

9 Should I speak of the wounds, although not visible
10 to the untrained eye but no less existent? Despite not dying
11 on the battlefield with my brothers in arms, I am faithful
12 that I am here before you today, even though I live with
13 bilateral hearing loss from the grenades that detonated in
14 such close proximity to me that day, and the invisible wound
15 of posttraumatic stress disorder.

16 Being able to come home to my family is a blessing
17 that I will never take for granted and that he, nor anyone,
18 can ever take away. I found the strength and courage to seek
19 professional counseling in February 2014, which I still attend
20 to this day. A characteristic and strength that no matter
21 what atrocity you commit against me, I am, and forever will
22 be, a United States Army soldier at heart, mind, body, and
23 soul, and that you cannot defeat that.

24 It is my mission to live as long as it takes to be
25 there for my family, my former comrades, my brothers in arms,

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1 and myself to see your isolation from society for the rest of
2 your life.

3 You may have some moral victory in your mind about
4 what you did that day. But today you will forever endure the
5 loss of not successfully taking my life. And I stand here in
6 victory over you, and you will never take away from me my will
7 to fight, live, and the love I have for my brothers and my
8 country.

9 That is all I have, Your Honor.

10 THE COURT: Thank you. All right.

11 MR. JACOBS: And finally, Your Honor, Jordan Dennis,
12 the brother of Private First Class Jerod Dennis.

13 THE COURT: Good morning, Mr. Dennis.

14 MR. DENNIS: Good morning, Your Honor.

15 If it's okay with the Court, my comments are
16 directed more towards the defendant, if that's okay.

17 THE COURT: It's okay.

18 MR. DENNIS: In July of 1987, Jerod Rhoton Dennis
19 became a leader. At almost four years old he became a big
20 brother. His ability to love and care for another was
21 immediate. Social and outspoken, Jerod would translate his
22 new brother's cries and grunts for the adults so they can warm
23 the milk and change the diaper. His little brother depended
24 on him for basketball and fishing lessons and all those
25 important things young kids need to learn. Jerod would also

1 provide leadership for his little brother.

2 Jerod was more than just a big brother. He would
3 walk into any room and flood it with laughter and smiles.
4 Jerod can make anyone laugh and anyone smile. His gift was
5 love and laughter. His family and friends depended on him for
6 that.

7 April 25th, 2003, could have been a normal day that
8 ended like a normal night, but sometime before then you felt
9 the pain of the world, a pain we've all encountered; loss of
10 something or someone, and you chose to react to that pain with
11 anger and rage. April 25th, 2003 could have been a normal
12 day, but someone you follow delivered a verdict and you and
13 your rage came to deliver a sentence.

14 Since that day, I have not stopped looking for him
15 everywhere I go and in every face I encounter since those
16 first hellish moments in this new reality.

17 I have every right to hate you, to curse you. I
18 have every right to be angry, to use my tongue like a dagger
19 in an attempt to get even, and no one would blame me.

20 But I must share a truth that I have learned. You,
21 your anger, your rage, your malicious intent, your weapon of
22 my hero's destruction, your guns, your violence, your bullets,
23 your tools of harm, all of that is just background noise to
24 the true tragedy here. Jerod's absence. Our loss.

25 Your expanse and Jerod's last moments made you feel

1 like you were at Ground Zero. But you have no idea. Ground
2 Zero was on the other side of the world in a small town in
3 Oklahoma. Today I'm often distracted by my brother's absence,
4 always half listening while half mourning. But I talk to him
5 often and still have his leadership. Jerod lives on more than
6 ever.

7 My sister, my mother, and father, my family and
8 friends see him in me and I see him in them. It is in our
9 lives you will see Jerod's legacy of love, laughter, and
10 caring.

11 On April 26th, 2003, we all woke up in a cold world
12 but Jerod is the warm sunshine that brightens it. And in that
13 light we will not be blind to the world, we will be active and
14 we will make a place for Jerod's memory, legacy, and love to
15 live on.

16 Jerod's 19 years of impact on this world was far
17 stronger and more powerful than your few seconds you spent
18 trying to destroy it. Your few seconds may have caused mass
19 destruction, but soon after, at Ground Zero, Jerod brought us
20 together and we began to rebuild, and Jerod's story did not
21 end with your few seconds. There have been many chapters
22 since then and he is still the main character.

23 My over 15 years with my brother learning and
24 following his lead taught me more than your few seconds did.
25 I will not join you in your cyclical hatred. I will not give

1 in to your systemic terrorism with hatred and anger. You may
2 have caused my pain, but Jerod caused my forgiveness. Because
3 of Jerod, I say to you that I hold no ill will towards you.

4 I do not seek to indemnify you for your actions, but
5 know that you are the only person that is angry -- I'm
6 sorry -- but know that the only person that is angry now is
7 you. I wish our circumstances were different so that neither
8 of us were here. But Jerod is still with us and I feel so
9 sorry for you. You see, Jerod is only concerned with those he
10 loves now and I know that.

11 So I will do what I have done since July of 1987;
12 follow his lead. You and your few seconds are not my concern.
13 My family, friends, Jerod's memory and legacy are. Those are
14 the people and things that carry me forward. Everywhere I am
15 present, there will always be at least two, my brother and me.
16 As for you, I hope you let go of your anger and rage and find
17 peace in your life.

18 Thank you for your time.

19 THE COURT: Thank you, Mr. Dennis.

20 I need about five or ten minutes and we will
21 reconvene then.

22 (Whereupon, a recess was taken at 10:36 a.m.)

23 THE COURTROOM DEPUTY: All rise.

24 THE COURT: Be seated, please.

25 I've considered all of the applicable sentencing

1 factors under the statute, including the advisory guidelines.

2 The first thing I want to do is to thank the family
3 members and friends who came today, and particularly those who
4 spoke. I want to tell you that, you know, as I articulate the
5 sentence here it might sound very technical and legal to you,
6 and that's because we have to make sure that sentence is
7 pronounced dispassionately, according to the law, but I don't
8 want you to think for a second that I didn't hear what you
9 said and that I don't appreciate the human element here and
10 that I haven't been influenced by what you said, because I
11 have. I have taken it to heart in just the way you intended
12 it and I appreciate the real costs here.

13 Having said that, let me turn to the sentencing
14 factors and the higher courts have said that the place I am to
15 start is with the sentencing guidelines.

16 I will tell you, this is, again, a technical point
17 for the lawyers mostly, that I don't think the guidelines are
18 all that helpful in a case like this. For some but not all of
19 the reasons that defense counsel has stated, it's just that
20 when you add together so many numbers for so many
21 enhancements, you lose track of what actually happened and
22 what a depraved individual this defendant is and the terrible
23 affect that he's had on people, you get lost in the numbers.

24 I don't think this is the kind of crime or the kind
25 of defendant that lends itself very easily to mathematization

1 where you just put numbers on everything and look at that as a
2 proxy for how horrible it was.

3 What I take from the guidelines is that Congress and
4 the Commission considered this kind of crime under these
5 circumstances with these results by a defendant like this to
6 be as severe a federal crime as there is. And that's what I'm
7 taking from the guidelines, but that's all I'm taking from the
8 guidelines.

9 Having said that, you know, I don't have any doubt
10 that the other sentencing factors that the law requires me to
11 consider, independently without even considering the
12 guidelines, compel a sentence of life imprisonment.

13 I understand that's the most severe sentence I could
14 impose. I don't know that I've ever done it before. I
15 certainly do not do it lightly. But I think that all of the
16 relevant non-guideline sentencing factors as well as the
17 guidelines strongly point to that conclusion.

18 Not that the factors and the statute are listed in
19 any kind of priority, but it just so happens that the first
20 one that I am instructed to consider is the nature of the
21 crime and the circumstances of the offense.

22 This defendant killed two young men. He wanted to
23 kill other young men, and he wanted to kill dozens or maybe
24 hundreds of other Americans and other nationalities who were
25 civilians. I can't think of a more serious crime. And as the

1 raison d'être of al-Qaeda to do things like that, it
2 occurred under the most aggravated circumstances that it
3 possibly could.

4 And I think it says something when the very
5 able-defense counsel, and I want to commend them for the
6 yeoman job they did here under the most difficult
7 circumstances, but they were forced to argue as one of their
8 lead arguments that, well, at least it isn't a war crime.

9 Now implicit in that is the suggestion that maybe
10 it's not as bad killing soldiers as it is killing civilians
11 because it's not a war crime to kill soldiers. That's a
12 degree of relativism that really does not have any meaning for
13 me. And, frankly, I am confident that the defendant does not
14 differentiate between whether his victims are American
15 civilians who are American soldiers. We know that from his
16 plot to bomb the embassy, which would have had many civilian
17 casualties. Now I understand that what defense counsel is
18 really arguing is that the defendant should be treated as a
19 soldier rather than as a criminal, even if he's an unlawful
20 soldier under the laws of war.

21 Putting aside the fact that that does not
22 accommodate the bombing conspiracy, soldiers in war time do
23 not target embassies located in third countries.

24 I reject it because Congress has rejected it. It
25 has given the Executive Branch discretion as to whether to

1 prosecute these crimes in district court or not, and it's not
2 for me to second guess the Executive as a mitigating factor in
3 determining the appropriate sentence for a federal crime.

4 I do agree with the government that defense
5 counsels' attempt to present this in a war context is really a
6 backdoor way of arguing that the case shouldn't have been
7 tried in this court. And since it was, I guess the meaning is
8 it should be a mitigating factor.

9 It's kind of like when the defendant kept saying to
10 me at the beginning of the case, and it's consistent with what
11 he said to the marshals today, that he wanted to be tried in
12 the World Court and he wouldn't recognize any court other than
13 the World Court.

14 Now, you know, I rejected the enemy combatant
15 defense, which is a recognized defense to certain criminal
16 charges. There is such a defense. But none of its
17 prerequisites were met here, and I don't think they are any
18 more applicable or the defense is any more applicable at
19 sentencing. I know there's an academic opinion on which the
20 defendant's relied that says this ought to be treated under
21 the Geneva Convention. I think Congress has given the
22 Executive the choice of whether to do that or not.

23 So I'm not expressing a view on whether a case like
24 this ought to be tried in a civilian court or a military
25 court. That's not my issue. Congress has criminalized this

1 conduct, equated it or elevated it above or is equal to the
2 all the other --

3 MR. STERN: Judge, I'm sorry, we lost the video
4 feed.

5 THE COURT: All right, we'll wait.

6 (Pause.)

7 THE COURTROOM DEPUTY: One moment.

8 THE COURT: All right, we're going to take a recess
9 until we can restore the connection.

10 (Whereupon, a recess was taken at 10:51 a.m.)

11 THE COURTROOM DEPUTY: All rise.

12 THE COURT: Be seated, please.

13 All right, I think I've said everything I had to say
14 about the nature of the crime and the circumstances of the
15 offense.

16 The next factor in the statute is the history and
17 characteristics of the defendant. This is usually and it is
18 here a very important factor to look at in determining the
19 appropriate sentence. All I can say about this defendant is
20 he is a person of murderous zeal. He is totally self-absorbed
21 and it eliminates any moral system that governs him, except
22 his single-minded desire to kill Americans.

23 Now at the earlier stages of this case, the
24 characteristic was on full display. He was quite willing to
25 talk to me, and I think he was quite willing to talk to his

1 lawyers as well, when he thought he had a chance of persuading
2 us of his point of view. But when it became clear that that
3 wasn't going to happen, then he just decided to boycott, and
4 that continues to this morning.

5 And his statement to the marshal "This is not my
6 court, that is not my judge," that is his attitude from day
7 one in this proceeding. I don't see him caring about anything
8 or anyone except what he wants to do. He has one here and
9 that's to kill Americans. That's all there is to his history
10 and characteristics, as far as I'm concerned.

11 Another factor the statute requires me to consider
12 is deterrence, both general and specific.

13 Now I think the government's point is accurate. If
14 this man ever walks the street again, the first thing he will
15 do is try to kill Americans.

16 There's no mental health treatment I think that can
17 solve that. That is just the way he is wired. Everything in
18 his background and the training he sought suggests that that
19 is a risk that we have to take very seriously.

20 There's not an ounce of remorse. There is not a
21 smidgen of self-doubt about what has done with his life. I
22 think defense counsel is right that a large part of that is
23 one of their experts I think said narcissism, it is, but lots
24 of criminals have mental illness without being legally
25 incompetent. I think what we heard this morning again

1 confirms that he's making choices. And the bottom line is he
2 needs to be deterred because the risk of death to more
3 Americans is very real if he is not deterred.

4 As to general deterrence, you know, I understand
5 defense counsels' point that whatever sentence I pronounce
6 here is not going to end terrorist attacks. That is clearly
7 true.

8 On the other hand, I think what we have to recognize
9 is that general deterrence in many cases, and particularly in
10 this one, works best at the margins. You have to keep in mind
11 that if it becomes known that the consequences I'm going to
12 impose on this defendant today are the consequences for this
13 conduct, well then maybe that will deter one person, maybe it
14 will deter ten people. It won't end terror, but it might
15 deter somebody. And even one person who gets deterred, that
16 could mean the continuation of any number of American lives
17 that might be at risk if that person were not deterred, and
18 that to me is a worthwhile consideration for sentence.

19 Now, the defense has raised a number of mitigating
20 factors. And I will tell you that several of those, not all
21 of them, but several of those I think are perfectly valid and
22 I relied on them in the right case. The fact that he was
23 tortured in Libya. The fact that he had very difficult
24 conditions of confinement and served a lot of time, both here
25 and prior to coming here. And that his confinement here will

1 continue to be more difficult.

2 Now, in the right case, those are perfectly valid
3 things for me to consider. And I think the defense has done a
4 fine job of presenting those. But they are so grossly
5 overshadowed and overwhelmed by the other sentencing factors
6 that I've articulated; deterrence, seriousness of the crime,
7 history and characteristics of this defendant that, you know,
8 I'm considering them and I think they're valid, but they don't
9 reduce the sentence be it below what those factors compel.

10 The only other thing I will also say, I'm not seeing
11 the defenses' argument on acceptance of responsibility.
12 Boasting is not accepting responsibility. Acknowledging evil
13 while being proud of doing evil is not acceptance of
14 responsibility. So I'm not taking that into account as a
15 serious factor I need to consider.

16 And then I think the last thing the defense counsel
17 raised was that a life sentence here would not match or at
18 least would not be in the same ballpark as sentences handed
19 out in similar cases.

20 I'm convinced by the government's submission that
21 there is no issue of sentencing disparity here because these
22 crimes are each so sui generis that it's very hard to compare
23 them across the board. I do not see a life sentence here as
24 an outlier in any way. For those reasons, the sentence is as
25 follows:

1 As to Counts One and Two, life imprisonment on each
2 counts to run concurrently.

3 As to Counts Three and Four, 15 years on each counts
4 to run concurrently with each other.

5 And with Counts One and Two, and as to Count Six,
6 ten years to run consecutively to the Counts One and Two.

7 I will impose the mandatory I believe it's a
8 600-dollar special assessment.

9 I'm not going to impose supervised release because I
10 don't think this defendant should ever get out.

11 And I'm not going to grant defense counsels' request
12 for a sentencing recommendation to the BOP. I think the BOP
13 is going to have its hands full with this violent and
14 uncooperative defendant and it's got to allocate such
15 resources in a manner it deems appropriate to effectuate
16 sentence.

17 Now technically I don't think the defendant's been
18 listening to me, but again for the sake of good order, I will
19 tell him if he wants to appeal his conviction or the sentence,
20 he has got to get a notice of appeal filed within 14 days.
21 His lawyers will do for him. The clerk will do it if he is
22 certifies he can't afford a lawyer, or he can get a form and
23 do to himself. But if he doesn't see to it that it gets filed
24 in 14 days, he will have waived any right to appeal that he
25 may have.

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1 Is there anything further?

2 MR. JACOBS: Nothing from the government, Your
3 Honor.

4 MR. DRATEL: Your Honor, just one thing. It's a
5 500-dollar special assessment.

6 THE COURT: Not 6?

7 MR. DRATEL: Right, there's one count that the
8 government did not dispute.

9 THE COURT: Oh, I forgot that. That's right.
10 Five-hundred-dollar special assessment.

11 Thank you, Mr. Dratel.

12 MR. STERN: We are going to file the notice of
13 appeal on his behalf.

14 And with Your Honor's permission, we are seeking to
15 be relieved because I think he may want to make claims about
16 us. And we're going to suggest, with your permission, not the
17 lawyer from the CJA panel but other lawyers, because I think
18 there are complicated unusual issues in this case.

19 THE COURT: Well there are, but I need to leave the
20 decision on that up to the Second Circuit. They'll decide who
21 they want to appoint.

22 I will tell you I agree with you that you all should
23 be relieved so that someone can have a full look at the
24 record, and I also think you have gone way beyond what usual
25 professional commitment requires in handling this case and you

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1 ought to be relieved just for that reason, too.

2 MR. STERN: Thank you.

3 THE COURT: All right, thank you, all. We are
4 adjourned.

5 MS. KELLMAN: Thank you, Judge.

6

7 (Whereupon, the matter was concluded.)

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12 I certify that the foregoing is a correct transcript from the
13 record of proceedings in the above-entitled matter.

14 s/ Linda D. Danelczyk

March 2, 2018

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LINDA D. DANELCZYK

DATE

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